

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB726)

Received: **03/24/2000**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Richard Grobschmidt (608) 266-7505**

By/Representing: **John Sumi**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact: **Greg Hagopian**

Alt. Drafters:

Subject: **Tax - property**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Challenge to unlawful taxes related to tax exempt property

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/1	jkreye 03/27/2000	gilfokm 03/27/2000	jfrantze 03/27/2000	_____	lrb-docadmin 03/27/2000	lrb-docadmin 03/27/2000	

FE Sent For:

<END>

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/1	jkreye	1-3-27 kmg	6/3/27	Jch 3/27			

FE Sent For:

<END>

1999
AB 726

MEMORANDUM
OFFICE OF **THE CITY ATTORNEY**
ROOM 800 - CITY HALL

TO: Laurie **Kuiper**, Intergovernmental Relations
FROM: Gregg C. **Hagopian**, Assistant City Attorney
DATE: January 25, 2000
RE: Technical Amendments to Wis. Stat. §75.521 for Inclusion in the Reviser's Bill

As you know, 1997 **AB 290**. inter alia, created Wis. Stat. §74.35(2m), establishing an exclusive procedure to challenge unlawful taxes where the claim is that property is exempt. In order to make Wis. Stat. §75.521 be in harmony with that exclusive procedure requirement in §74.35(2m), I offer the **attached** language to amend §75.521. This really should not be controversial in that it is merely a technicality to make §75.521 harmonize with §74.35(2m).

Please call if you have questions or comments

gch:wt:24674

INSERTS TO s. 75.521**Insert A**

. and, in the case of lands alleged to be exempt by law from taxation, other than an allegation that the lands are exempt under s. 70.11(2 i)(a) or (27), the answer must also allege compliance with the procedure set forth in s. 74.35.

Insert B

; providing, however, that in the case of **property** alleged to be not subject to tax, special assessment, special charge or special tax because of **alleged** exemption by law From taxation. other than an allegation that the **property** is exempt under s. 70.11(21)(a) or (27), there must also be proof of compliance with the procedure set forth in s. 74.35.

Insert C

, and, in the case of land alleged to be exempt by law from taxation, other than an allegation that **the** land is exempt under s. 70.11(21)(a) or (27). the defendant must also specify in the defendant's answer and affirmatively establish compliance with the procedure set forth in s. 74.35.

Dsert

and that, in the case of land alleged to be exempt by law from taxation, other than an allegation **that** the land is exempt under s. 70.11(21)(a) or (27), **such** person followed the procedure set forth in s. 74.35.

Greg Heggen
(414) 286-2601

**CITY OF MILWAUKEE
 OFFICE OF THE CITY ATTORNEY
 200 EAST WELLS STREET, ROOM 800
 MILWAUKEE, WISCONSIN 53202
 Telephone No. (414) 286-2601
 Fax No. (414) 286-8550**

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INSERT TO s. 75.521

Insert A

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Insert B

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Insert C

, and, in the case of land alleged to be exempt by law from taxation, other than an allegation that **the** land **is exempt** under s. 70.11(21)(a) or (27), the defendant must also specify in the defendant's answer and **affirmatively** establish compliance with the procedure set forth in s. 74.35.

Insert D

and that, in the case of land alleged to be exempt by law from taxation, other than an allegation that the land is exempt under s. 70.11(21)(a) or (27), such person followed the procedure set forth in s. 74.35.



75.42 TAX SALES

97-98 Wis. Stats.

:936

TECH. AMEND.'s TO
75.521 (1-25-00)

the trial of such action. In no case shall costs be taxed as a personal claim against any defendant for attorney fees in excess of \$25.

History: 1979 c. 110 s. 60 (13); 1987 s. 378.

75.43 Election to receive deposit; costs. The county may, at any time within 20 days after receiving an answer showing that a deposit has been made by any defendant or defendants as provided in s. 75.42, give notice to such defendant or defendants that it elects to receive such deposit and that it will, at a time specified in such notice, apply to the clerk of the circuit court, circuit judge or a court commissioner to adjust the costs and disbursements which said defendant or defendants ought to pay, and that upon the payment of the costs and disbursements so adjudged the county will release to such defendant or defendants all right, title and claim which it has to the parcel or parcels of land on account of which such deposit is made by virtue of any deed made for the nonpayment of taxes; and unless such costs are paid within 20 days after the same shall have been so adjusted the clerk of the court shall, upon presentation of an affidavit showing the nonpayment thereof, enter judgment therefor in favor of the county and against the defendant, which shall be enforced as other money judgments.

History: 1987 s. 378.

75.44 Release. On the payment of the costs by such defendant or defendants or the collection thereof the county shall execute a release to said defendant or defendants of all such right, title, interest or claim in said parcel or parcels of lands, duly acknowledging the same, and deliver it to the said defendant or defendants; and thereupon said action shall be discontinued as to the said parcel or parcels of land so released.

History: 1987 s. 378.

75.45 Deed as evidence. In any action maintained under the provisions of this chapter the production of a deed, a copy of which is set forth in the complaint substantially in the form prescribed by law or a certified copy of the record thereof, shall be presumptive evidence of an absolute title in fee simple in the county, as the grantee therein named or its assigns in and to the Land therein described.

History: 1987 s. 378.

75.66 Trial: defendant's interest. All issues of fact and of law joined in any such action shall be tried by the court unless the court shall otherwise direct or unless a party to an issue of fact in any such action shall demand a trial by jury, in which case such issues shall be tried by jury as other issues of fact; and on the trial of every such action every defendant shall be deemed to have a redeemable interest in all the lands described in the county's complaint in respect to which any relief or judgment is sought against such defendant, unless it be otherwise alleged therein.

History: 1987 s. 378.

75.47 Separate trials. The trial of any issue of fact or of law in such action joined with any defendant or defendants claiming title to and defending as to any separate parcel or parcels of land shall be had separately and a separate judgment may be rendered on such issue.

75.48 Effect of judgment. If a judgment shall be rendered either for want of an answer or upon the trial of an issue of law or fact in favor of the county and against the defendants claiming such lands or against a defendant or defendants claiming any separate parcel or parcels thereof, such judgment shall forever bar such defendants and all others claiming under them, after the filing of a notice of the pendency of such action as provided by law, from all right, title or interest in said lands or in such separate parcel or parcels thereof.

History: 1987 s. 378.

75.49 Judgment for defendant. If in any such action judgment be rendered in favor of any defendant claiming any parcel or parcels of said lands or interest therein, such judgment shall

Adjudge that there be released to such defendant all the county's right, title or claim, at the time of the commencement of the action, by virtue of any deed made for the nonpayment of taxes to the land or interest as to which such judgment is rendered, and that the defendant recover the defendant's costs and disbursements in the action; and the money, if any, deposited by such defendant upon answering shall be applied in payment of such costs, and the surplus of such deposit, if any, shall be paid to the county.

History: 1987 a. 378.

75.50 Unknown owners. If the county as plaintiff in such action cannot ascertain who are the proper persons to make defendants as to any tract or parcel of land described in the complaint, it may allege the fact in the complaint and they may be proceeded against as nonresident defendants and shall be described in the proceedings as unknown owners.

History: 1987 a. 378.

75.52 Judgment a bar, when. No such action shall be commenced by any person under the provisions of this chapter after a judgment shall have been rendered against that person in any action founded on such tax deed commenced by that person or those under whom that person claims for the recovery of the possession of the lands described in such deed or any part thereof, nor after a judgment shall have been rendered against that person in an action brought by the former owner to recover possession of the lands described in such deed or any part thereof.

History: 1991 s. 316.

75.52'1 foreclosure of tax liens by action in rem. (1) DEFINITIONS. Wherever used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "County" means one of the counties of the state or Wisconsin.

(b) "Tax lien" means the lien or interest evidenced by any tax certificate upon which a tax deed may be applied for as provided by law.

(c) "Treasurer" means the treasurer of a county.

(2) APPLICATION OF THIS SECTION. (a) Adoption of method. Notwithstanding the provisions of any other general, special or local law relating to foreclosure of tax certificates, taking of tax deeds upon tax certificates, and perfecting such tax deed title by former owner action or quiet title action, or conveyance from former owners of any interest in said lands, the governing body of any county may elect to enforce the collection of tax liens, the taking of tax title in the name of such county to tax delinquent lands and the perfecting of such tax title in the county in the cases where this section applies by means of the methods provided for in this section. Such election shall be evidenced by an ordinance to such effect in substantially the following form:

"ORDINANCE ELECTING TO PROCEED UNDER SECTION 75.521 Wis. Stats. IN RELATION TO THE ENFORCEMENT OF COLLECTION OF TAX LIENS.

The county board of supervisors of the county of . . . do ordain as follows:

From and after . . . (then insert dates) the . . . (here insert name of county) elects to adopt the provisions of section 75.521 Wis. Stats. for the purpose of enforcing tax liens in such county in the cases where the procedure provided by such section is applicable."

Upon the adoption of such ordinance, the provisions of this section shall be applicable to such county and the treasurer need not, thereafter, proceed upon its tax certificates in cases where this section is applicable in any of the other methods provided by ch. 75 or its charter provisions but may do so at the treasurer's option.

(b) Rescission of election to operate under section 75.521. Any county, after at least one year from the adoption of such ordinance, may rescind such election by an ordinance to such effect, which ordinance shall be adopted in the same manner as the original ordinance. Upon the adoption of a rescinding ordinance, the

1937 97-98 Wis. Stats.

TAX SALES 75.521

provisions of this section shall cease to be applicable to such county.

(c) **Saving clause.** Neither the election to adopt s. 75.521 nor the election to rescind the same shall affect any action or proceeding for foreclosure of the tax lien commenced prior to such election or rescission and such action or proceeding may be continued in the same manner as though such election or rescission had not been made.

(d) **Provisions of in rem method supersede.** Whenever any county shall have adopted this section and is using the procedure herein provided, the provisions of this section shall, with respect to the particular tax liens being collected, supersede the provisions of all general, special or local laws relating to the collection of tax liens by such county in conflict therewith, provided that nothing contained in this subsection nor any use made of the procedure provided in this section shall prevent the use of other procedures provided for in other sections of the statutes in the collection of other tax liens at the option of the county treasurer.

(3) **COMMENCEMENT OF PROCEEDING TO FORECLOSE TAX LIEN.**

(a) Whenever any land has been included in a tax certificate, the treasurer may file in the office of the clerk of the circuit court of the county one or more lists of parcels of property affected by unpaid tax liens as shown on the tax certificates in the treasurer's office. The treasurer may file the list when any of the following time periods elapses after the date of the tax certificate:

1. One year, if rating, removing and restoration of the site to a dust-free and erosion-free condition costs incurred by any city or village are included in the amount due for taxes.

2. One year, if the tax certificate is held by any city authorized to proceed under s. 74.87 or by any county that has a population of 500,000 or more.

4. Two years, if none of the conditions specified in subds. 1. and 2. applies.

(am) The parcels shall be numbered consecutively in the list prepared under par. (a). The list shall be known as the "List of Tax Liens of ... County Being Foreclosed by Proceeding in Rem ... (year) No." and shall bear the following caption:

"STATE OF WISCONSIN

CIRCUIT COURT

I...COUNTY

In the matter of the foreclosure of tax liens under section 75.521 Wisconsin Statutes by . . . County, List of Tax Liens for . . . (year) Number . . .". The list shall contain as to each parcel, the following:

1. A brief description sufficient to identify each parcel affected by such tax lien. The description shall state the lot, block and section number of any parcel upon any tract, the plat or map of which is filed in the office of the register of deeds of such county. If the lands be unplatted an engineer's metes and bounds description shall be a sufficient description.

2. The name or names of the last owner or owners and mortgagee or mortgagees of the parcel as the ownership or mortgage interest appears of record in the office of the register of deeds of the county in which the parcel is situated, and the state of Wisconsin if it has a determined but unpaid death tax lien, a filed, nonoutlawed income or franchise tax warrant or judgment entered in the judgment and lien docket, all in the county where the parcel is situated.

3. A statement of the amount of the principal sum of each tax lien in the hands of the county treasurer, together with the date from which and the rate at which interest shall be computed on said principal sum.

4. A petition to the court for judgment vesting title to each of said parcels of land in the county, as of the date of entry of judgment and barring any and all claims whatsoever of the former owner or any person claiming through and under the former owner since the date of filing the list of tax liens in the office of the clerk of the circuit court.

5. The names of all municipalities, other than the foreclosing county, having any right, title or interest in the land or in the tax liens or in the proceeds thereof.

(b) Such list of tax liens shall be verified by the affidavit of the county treasurer and shall be posted in the treasurer's office. The filing of such list of tax liens in the office of the clerk of the circuit court shall constitute and have the same effect as the filing and recording in the office of the register of deeds of such county of a separate and individual notice of the pendency of such proceeding as to each parcel described in such list, and likewise, notwithstanding any other provision of law, shall constitute the commencement of a special proceeding by the county against each parcel of real estate therein described and have the same effect as the filing or recording of an individual and separate petition or complaint by the county against each parcel of real estate therein described to enforce the payment of the tax liens against such property.

(c) A copy of the petition and so much of the list of tax liens as shall include the description of a particular parcel shall be mailed by registered or certified mail, return receipt requested, by the county treasurer to the last-known post-office address of each owner and mortgagee of record, the state of Wisconsin in the instances specified in par. (am) 2., and to each municipality, other than the foreclosing county, having any right, title or interest in the land or in the tax liens or the proceeds thereof. An affidavit of the treasurer setting forth the names of the owners, mortgagees, the state of Wisconsin in the proper case and municipalities for whom a post-office address has been ascertained, giving the addresses and stating that notice was mailed, giving the date of mailing, and stating that no present post-office address was ascertainable for the other owners and mortgagees, shall be filed and constitute full compliance with this paragraph.

(3m) **EXTENDED TIME FOR FORECLOSING TAX LIENS.** (a) In this subsection:

1. "Dwelling" means any building that contains one or 2 dwelling units and any land included with that building in the same entry on the tax roll.

2. "Dwelling unit" means a structure or that part of a structure used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(b) The common council of any city authorized to proceed under s. 74.87 may by ordinance direct its treasurer to defer the foreclosure of tax liens on dwellings. The ordinance shall designate the period of time that the foreclosure of tax liens shall be deferred after the one-year period provided under sub. (3) (a) 1. and 2. The deferral period may not exceed 2 years. The deferral shall apply to those delinquent taxes and assessments incurred while the dwelling was owned and occupied by the person who owns and occupies the building at the beginning of the deferral period. If the owner ceases to occupy the dwelling during the deferral period, the city treasurer shall foreclose the tax lien on the dwelling as soon as practicable. A city adopting an ordinance under this subsection may require the dwelling owner to submit proof that the owner is eligible for a deferral under this subsection.

(4) **DUTY OF THE CLERK OF CIRCUIT COURT.** Each clerk of the circuit court with whom the list of tax liens is filed shall index it by year and list number, and alphabetically by the names of those set forth in the list, under sub. (3) (am) 2., in a separate record kept for that purpose and the clerk shall be entitled to a fee of \$3 for receiving, filing and indexing of each such list, in lieu of any other fees to which he or she might otherwise be entitled for those services. The circuit court of the county in which the delinquent list is filed has jurisdiction of the proceeding authorized by this section.

(5) **RIGHTS OF PERSONS HAVING AN INTEREST IN PARCELS OF LAND AFFECTED BY TAX LIENS.** Every person, including any municipal taxing district other than the county, having any right, title or interest in, or lien upon, any parcel described in such list may

75.521 TAX SALES

97-98 Wis. Stats. 1928

redeem such parcel by paying all of the sums mentioned in such list of tax liens together with interest thereon and the reasonable costs that the county incurred to initiate the proceedings under sub. (3) plus the person's share of the reasonable costs of publication under sub. (6), or such portion thereof as is due for the interest therein or pan thereof owned by such person which amount shall be determined by the county treasurer on application, before the expiration of the redemption period mentioned in the notice published pursuant to sub. (6), or may serve a verified answer upon the county treasurer of such county, as provided in sub. (7). The caption of such answer shall contain a reference to the number or numbers of the parcels concerned as shown by the treasurer's list. Such answer must be served on said county treasurer and filed in the office of the clerk of the circuit court within 30 days after the date mentioned in the notice published pursuant to sub. (6), as the last day for redemption. In the event of the failure to redeem or answer by any person having the right to redeem or answer within the time herein limited, such person, and all persons claiming under and through that person, from and after the date of the filing of said list of tax liens with the clerk of the circuit court, shall be forever barred and foreclosed of all his or her right, title and interest in and to the parcel described in such list of tax liens and a judgment in foreclosure may be taken as herein provided. Upon redemption as permitted by this section, the person redeeming shall be entitled to a certificate evidencing such redemption from the county treasurer of such county, describing the property in the same manner as it is described in such list of tax liens and the fact of such redemption shall be noted upon the tax rolls in the office of the county treasurer, who shall file a certified copy of such redemption certificate with the clerk of the circuit court and upon such filing, such clerk shall note the word "Redeemed" and the date of such filing opposite the description of said parcel on such list of tax liens. Such notation shall operate to cancel the notice of pendency of proceeding with respect to such parcel or such portion thereof. The person so redeeming shall be entitled to add the amount paid in redemption to the face amount of any lien which the person may have against said lands and to have interest thereon until paid.

(6) PUBLIC NOTICE OF IN REM PROCEEDING. Upon the filing of such list in the office of the clerk of the circuit court, the county treasurer forthwith shall prepare a notice that such list of tax liens and petition has been so filed and a copy thereof posted in the office of said county treasurer. The treasurer shall cause such notice, together with the list of tax liens and petition, to be published as a class 3 notice, under ch. 985. Such notice shall be in substantially the following form:

NOTICE OF COMMENCEMENT OF PROCEEDING
IN REM TO FORECLOSE TAX LIENS
BY...COUNTY

(Here insert list of tax liens and petition as filed in office of clerk of the circuit court.)

TAKE NOTICE That all persons having or claiming to have any right, title or interest in or lien upon the real property described in the list of tax liens, No. on file in the office of the clerk of the circuit court of county, dated and hereinabove set forth, are hereby notified that the filing of such list of tax liens in the office of the clerk of the circuit court of county constitutes the commencement by said county of a special proceeding in the circuit court for county to foreclose the tax liens therein described by foreclosure proceeding in rem and that a notice of the pendency of such proceeding against each piece or parcel of land therein described was filed in the office of the clerk of the circuit court on (insert date). Such proceeding is brought against the real property herein described only and is to foreclose the tax liens described in such list. No personal judgment will be entered herein for such taxes, assessments or other legal charges or any part thereof.

TAKE FURTHER NOTICE That all persons having or claiming to have any right, title or interest in or lien upon the real property described in said list of tax liens are hereby notified that a certified

copy of such list of tax liens has been posted in the office of the county treasurer of county and will remain posted for public inspection up to and including (here insert date at least 8 weeks from the date of the first publication of this notice) which date is hereby fixed as the last day for redemption.

TAKE FURTHER NOTICE That any person having or claiming to have any right, title or interest in or lien upon my such parcel may, on or before said (insert redemption final date), redeem such delinquent tax liens by paying to the county treasurer of county, the amount of all such unpaid tax liens and in addition thereto, all interest and penalties which have accrued on said unpaid tax liens, computed to and including the date of redemption, plus the reasonable costs that the county incurred to initiate the proceedings plus the person's share of the reasonable costs of publication under sub. (6).

INSERT A

.... County
By

County Treasurer

(7) RIGHT OF PERSON HAVING AN INTEREST IN OR LIEN UPON PARCELS DESCRIBED IN LIST OF TAX LIENS, TO ANSWER PETITION. (a) Every person having any right, title or interest in or lien upon any parcel described in such list of tax liens, may serve a duly verified answer upon the county treasurer for such county, setting forth in detail, the nature and amount of that person's interest and objecting to the proposed foreclosure upon one or more of the following grounds only:

1. That the lands in which such person is interested, described in such list of tax liens, were not liable to taxation, special assessment, special charge or special tax at the time the tax, special assessment, special charge or special tax for the nonpayment of which the tax lien arises, was levied.

2. That the tax, special assessment, special charge or special tax for the nonpayment of which said tax lien arises, was in fact paid before the last day of the redemption period provided by law.

3. That the tax lien is barred by the statute of limitations.
(b) No other defense to the petition of said county set forth in such tax list, shall be set up. Such answer must be filed in the office of the clerk of the circuit court and served upon the county treasurer of such county within 30 days after the date hereinabove mentioned, as the last date for redemption.

(8) DUTY OF THE COURT TO ENTER JUDGMENT IN DEFAULT CASES. In the event of the failure to redeem or answer by any person having the right to redeem or answer as hereinabove provided, such person and all persons claiming under and through that person, from and after the date of the filing of the list of tax liens in the office of the clerk of the circuit court of the county, shall be forever barred and foreclosed of all right, title and interest and equity of redemption in and to the parcel described in such list of the tax liens, and upon filing of an affidavit of such default or failure of redemption by the county treasurer of such county, the court in which such list of tax liens is filed, shall render final judgment ordering and adjudging that the county is vested with an estate in fee simple absolute in such lands, subject, however, to all unpaid taxes and charges which are subsequent to the latest dated valid tax lien appearing on the list specified in sub. (3) (b) and to recorded restrictions as provided by s. 75.14 (4) and all persons, both natural and artificial, including the state of Wisconsin, infants, incompetents, absentees and nonresidents who may have had any right, title, interest, claim, lien or equity of redemption in such lands, are forever barred and foreclosed of such right, title, interest, claim, lien or equity of redemption. Such judgment shall be deemed to be based on the latest dated valid tax lien appearing on the list of tax liens. No personal judgment shall be entered against any person having or claiming to have any right, title or interest in or lien upon said lands. Such judgment shall have the effect of the issuance of a tax deed or deeds and of judgment to bar former owners and quiet title thereon.

(9) FILING OF AFFIDAVIT. All affidavits of filing, publication, posting, mailing or other acts required by this section, shall be

made by the person performing such acts and shall be filed in the office of the clerk of the circuit court of the county in which the property subject to such tax lien is situated and shall, together with all other documents required in this section, be filed in such office, constitute and become part of the judgment roll in such foreclosure proceeding.

(10) **CONTESTED ISSUES AND TRIAL THEREOF.** If a duly verified answer is served upon the county treasurer within the period mentioned in sub. (7), the court shall hear and determine the issues raised by the petition and answer in the same manner and under the same rules as it hears and determines civil actions, except as in this section otherwise provided. Upon such trial, proof that such tax, special assessment, special charge or special tax, together with any interest or penalty which may have been due, was paid or that the property was not subject to tax, special assessment, special charge or special tax, or that such tax lien is barred by the statute of limitations, shall constitute a complete defense. Whenever an answer is interposed as herein provided, there shall be a severance of the proceeding as to any parcel or parcels of land in which such answering defendant has any right, title or interest as alleged in his or her answer, and as to the other parcels in such list, the proceeding shall proceed as provided in sub. (8).

(11) **PREFERENCE OVER OTHER PROCEEDINGS AND ACTIONS.** Any proceeding brought pursuant to this section shall be given preference over all other causes and actions not on trial and no such proceeding shall be referred.

(12) **PRESUMPTIONS OF VALIDITY: GUARDIAN AD LITEM.** (a) The county need not plead or prove the various steps, proceedings and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of tax liens and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax, special assessment, special charge or special tax, because of which said land was not liable to taxation, special assessment or other lawful charge, must particularly specify in the defendant's answer such jurisdictional defect or invalidity and must affirmatively establish such defense. **INSERT C**

(b) This section shall apply to and be valid and effective with respect to all defendants even though one or more be infants, incompetents, absentees or nonresidents of the state of Wisconsin, provided that a guardian ad litem shall be appointed to sue for all persons known or unknown who have or may have an interest in the lands described in any list and who are or may be minors or incompetents at the date of filing such list. Such guardian ad litem may be appointed by the court without notice and the fee for the services of the guardian ad litem as fixed by the court shall be paid by the county.

(13) **JUDGMENT, CONTENTS.** (a) Where, as to any parcel in the list of tax liens, an answer has been interposed by a party and the court shall determine in favor of such party upon such answer, the court shall make a final judgment divesting said parcel of the lien alleged to have accrued against same.

(b) In the event that the court shall determine that the issue raised by the answer of the defendant is without merit, a final judgment to such effect shall be entered ordering and adjudging that the county is vested with an estate in fee simple absolute in such lands subject, however, to all unpaid taxes and charges which are subsequent to the latest dated tax lien appearing on the list specified in sub. (3) (b) and to recorded restrictions as provided by s. 75.14, and all persons, both natural and artificial, including the state of Wisconsin, infants, incompetents, absentees and nonresidents who may have had any right, title, interest, claim, lien or equity of redemption in such lands, are forever barred and foreclosed on such right, title, interest, claim, lien or equity of redemption. Such judgment shall be deemed to be based on the latest dated tax lien appearing on the list of tax liens. Such judgment shall have the effect of the issuance of a tax deed or deeds and of judgment to bar former owners and quiet title thereon.

(14) **JUDGMENT TO BE RECORDED.** A certified copy of the judgment of the court in both default and contested cases shall be recorded by the prevailing party in the office of the register of deeds of such county.

(14a) **DAMAGES.** Any person who was the owner of any right, title or interest in land which was lost by judgment of foreclosure as provided in this section may within 2 years from the date of entry of such judgment, in the cases hereinafter mentioned other than fraud and within 6 years in the case of fraud, commence an action in the circuit court against the county to recover the fair market value of the person's interest therein at the date of entry of said judgment of foreclosure in rem. If the court determines that such person's right, title and interest in said land was unjustly foreclosed and lost because said person's interest in such lands was not subject to taxation, special assessment, special charge or special tax at the time of the levy of the tax, assessment or charge, for nonpayment of which said lands were foreclosed, or that in fact such tax, special assessment, special charge or special tax was paid by said owner, or that the tax lien upon which the judgment of foreclosure in rem was based was barred by the statute of limitations, or if such person lost said property through fraud without fault on his or her part, the court shall determine the fair market value of said land or of said person's interest therein as hereinabove set forth. The fair market value shall not exceed the amount arrived at by dividing the assessed valuation of such lands in the year in which such judgment in rem was entered by the percentage ratio of real estate assessments prevailing for the taxing district in which the lands were located as set forth in the equalization for state tax purposes of the same year. The court shall award judgment to such plaintiff in such amount, together with reasonable attorney fees to be fixed by the court, and the plaintiff's costs and disbursements of such action. The amount awarded the plaintiff shall be reduced by the total amount due, as of the date of entry of such judgment, for all current taxes and upon all tax certificates held by the county on such date that the court shall find were valid. Upon payment of the judgment the county may charge back as a tax to any taxing district the amount which such district received from the county in payment of taxes and interest on said land either by distribution of proceeds of sale thereof by the county or through other payment by the county to the extent that it exceeds the amount distributable to such district had the same been based upon the payment of the taxes and interest found by the court to be properly payable at the time of the entry of the judgment of foreclosure and applied in reduction of the amount awarded to the plaintiff hereunder.

insert D

History: 1977 c. 174; 1979 s. 34, 89; 1983 s. 52, 192, 302, 538; 1987 s. 17, 378; 1989 s. 330, 347; 1991 s. 39, 316; 1993 s. 301, 490; 1995 s. 224, 225, 417; 1997 s. 72, 250.

Partially valid judgments under this section are not permissible. In Matter of Foreclosure of Tax Liens, 106 W (2d) 244, 316 NW (2d) 362 (1982).

Judgment under this section extinguishes all rights, titles and interests in foreclosed property, including claim based on adverse possession. Published notice was sufficient. *Leciejewski v. Sedlak*, 116 W (2d) 629, 342 NW (2d) 734 (1984).

The role of a guardian ad litem appointed under sub. (12) (b) is outlined. *Waukesha County v. Tadych*, 197 W (2d) 653, 541 NW (2d) 782 (Ct. App. 1995).

When a state's constitution and statutes are silent as to the distribution of excess proceeds received when a tax lien is foreclosed and the property is subsequently sold by the municipality, the municipality may constitutionally retain the proceeds as long as there has been notice sufficient to meet due process requirements. Due process does not require that notices state that should the tax lien be foreclosed and property sold the municipality may retain all the proceeds. *Ritter v. Ross*, 207 W (2d) 477, 358 NW (2d) 909 (Ct. App. 1996).

See note to 75.14, citing 62 Am. Gen. 234.

75.54 **Reassessment of taxes by order of court.** (1) In all actions in any court of this state in which either party seeks to avoid or set aside in whole or in part any assessment, tax or tax proceeding or reassessment, if the court is of the opinion, after holding a hearing, that, for any reason affecting the groundwork of the tax and all of the property in any taxation district, the assessment, tax or tax proceeding should be set aside, the court shall immediately stay all proceedings in the action and in all other actions affecting the assessment, tax or tax proceeding in the taxation district until a reassessment of the property in the taxation district can



JK: + ...
King

**ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 726**

in 3-27-2000

Today

1 At the locations indicated, amend the bill as follows:

2 ✓ **1.** Page 1, line 9: after "assessments," insert "the procedure for challenging the
3 foreclosure of tax liens,".

4 ✓ **2.** Page 10, line 13: after that line insert:

5 **SECTION 1³m. 75.521 (7) (a) 1.** of the statutes is amended to read:

6 75.521 (7) (a) 1. That the lands in which such person is interested, described
7 in such list of tax liens, were not liable to taxation, special assessment, special charge
8 or special tax at the time the tax, special assessment, special charge or special tax
9 for the nonpayment of which the tax lien arises, [✓]was levied and for an allegation that
10 lands ~~are~~ exempt from taxation, except an allegation that the lands ~~are~~ exempt
11 under s. 70.11 (21) (a) or ~~s. 70.11 (27)~~, that the person complied with s. 74.35 with
12 respect to the lands." *were*

13 **SECTION 1⁸n. 75.521 (10)** of the statutes is amended to read:

8

were

1 75.521 (10) CONTESTED ISSUES AND TRIAL THEREOF. If a duly verified answer is
 2 served upon the county treasurer within the period mentioned in sub. (7), the court
 3 shall hear and determine the issues raised by the petition and answer in the same
 4 manner and under the same rules as it hears and determines civil actions, except as
 5 in this section otherwise provided. Upon such trial, proof that such tax, special
 6 assessment, special charge or special tax, together with any interest or penalty
 7 which may have been due was paid; or that the property was not subject to tax,
 8 special assessment, special charge or special tax and, for property that is alleged to be
 9 exempt under s. 74.35, or that the answering defendant complied with s. 74.35 with respect to
 10 the property; or that such tax lien is barred by the statute of limitations, shall
 11 constitute a complete defense. Whenever an answer is interposed as herein
 12 provided, there shall be a severance of the proceeding as to any parcel or parcels of
 13 land in which such answering defendant has any right, title or interest as alleged in
 14 his or her answer, and as to the other parcels in such list, the proceeding shall proceed
 15 as provided in sub. (8).

17 **SECTION 75.521 (12) (a)** of the statutes is amended to read:

18 75.521 (12) (a) The county need not plead or prove the various steps,
 19 proceedings and notices for the assessment and levy of the taxes, assessments or
 20 other lawful charges against the lands set forth in the list of tax liens and all such
 21 taxes, assessments or other lawful charges and the lien thereof shall be presumed
 22 to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax,
 23 special assessment, special charge or special tax, because of which said land was not
 24 liable to taxation, special assessment or other lawful charge, must particularly
 25 specify in the defendant's answer such jurisdictional defect or invalidity and must

1 affirmatively establish such defense and, for a defendant alleging that lands are
2 exempt from taxation, except lands that are alleged ^{to be} exempt under s. 70.11 (21) (a)
3 or ~~70.11~~ (27), must particularly specify such allegation and affirmatively establish
4 compliance with s. 74.35 with respect to the lands.

5 SECTION 1 ⁸ ~~r.~~ 75.521 (14a) of the statutes is amended to read:

6 75.521 (14a) DAMAGES. Any person who was the owner of any right, title or
7 interest in land which was lost by judgment of foreclosure as provided in this section
8 may within 2 years from the date of entry of such judgment, in the cases hereinafter
9 mentioned other than fraud and within 6 years in the case of fraud, commence an
10 action in the circuit court against the county to recover the fair market value of the
11 person's interest therein at the date of entry of said judgment of foreclosure in rem.
12 If the court determines that such person's right, title and interest in said land was
13 unjustly foreclosed and lost because said person's interest in such lands was not
14 subject to taxation, special assessment, special charge or special tax at the time of
15 the levy of the tax, assessment or charge, for nonpayment of which said lands were
16 foreclosed and, for lands that were exempt from taxation, except lands that were
17 exempt under s. 70.11 (21) (a) or ~~70.11~~ (27), the person complied with s. 74.35 with
18 respect to the lands, or that in fact such tax, special assessment, special charge or
19 special tax was paid by said owner, or that the tax lien upon which the judgment of
20 foreclosure in rem was based was barred by the statute of limitations, or if such
21 person lost said property through fraud without fault on his or her part, the court
22 shall determine the fair market value of said land or of said person's interest therein
23 as hereinabove set forth. The fair market value shall not exceed the amount arrived
24 at by dividing the assessed valuation of such lands in the year in which such
25 judgment in rem was entered by the percentage ratio of real estate assessments

1 prevailing for the taxing district in which the lands were located as set forth in the
 2 equalization for state tax purposes of the same year. The court shall award judgment
 3 to such plaintiff in such amount, together with reasonable attorney fees to be fixed
 4 by the court, and the plaintiff's costs and disbursements of such action. The amount
 5 awarded the plaintiff shall be reduced by the total amount due, as of the date of entry
 6 of such judgment, for all current taxes and upon all tax certificates held by the county
 7 on such date that the court shall find were valid. Upon payment of the judgment the
 8 county may charge back as a tax to any taxing district the amount which such district,
 9 received from' the county in payment of taxes and interest on said land either by
 10 distribution of proceeds of sale thereof by the county or through other payment by
 11 the county to the extent that it exceeds the amount distributable to such district had
 12 the same been based upon the payment of the taxes and interest found by the court
 13 to be properly payable at the time of the entry of the judgment of foreclosure and
 14 applied in reduction of the amount awarded to the plaintiff hereunder."

15 3. Page 11, line 23: after that line insert:

16 ^(4v)
 "FORECLOSURE OF TAX LIENS. The treatment of section 75.521 (7)(a)1., (10),
 17 (12) (a) and (14a) of the statutes first applies to petitions that are filed on the effective
 18 date of this subsection."

19 (END)

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